



# City of NORFOLK

C: Dir., Department of Development

To the Honorable Council  
City of Norfolk, Virginia

December 15, 2015

From: Charles E. Rigney, Sr., Director, Development

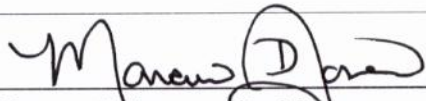
**Subject:** Approve a LDDC with Luna Development Services, LLC, for the property known as the Ballentine School

Reviewed:

  
Peter H. Chapman, Deputy City Manager

**Ward/Superward:** 3/7

Approved:

  
Marcus D. Jones, City Manager

**Item Number:**

**PH-13**

I. **Recommendation** Adopt Ordinance

II. **Applicant** Luna Development, LLC

III. **Description**

An ordinance to authorize the land disposition and development contract between the City of Norfolk ("City") and Luna Development Services, LLC ("Luna") to permit the conveyance of parcels of real property by the City to Luna for a phased development to redevelop the former Ballentine School into twenty-two market rate apartments and future development of seventeen townhomes.

IV. **Analysis**

- Luna Development was the successful respondent to an RFP solicitation by the City for the purchase and redevelopment of the former Ballentine Elementary School.
- A phased multi-family development. Approximately 22 one and two bedroom market rate apartments in the existing building in Phase I, and 17 townhomes in Phase II.

V. **Financial Impact**

The sale of this property will place it on the tax rolls, and provide quality housing. The sales price is \$275,000.00.

**VI. Environmental**  
N/A

**VII. Community Outreach/Notification**  
Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

**VIII. Board/Commission Action**  
N/A

**IX. Coordination/Outreach**  
This letter and ordinance have been coordinated with the Department of Development, City Attorney's Office, Department of Neighborhood Development and the City Manager's office.

Supporting Material from the City Attorney's Office and the Department of Development:

- Ordinance
- LDDC

Form and Correctness Approved:

By   
Office of the City Attorney

Contents Approved:

By   
DEPT.

NORFOLK, VIRGINIA

## ORDINANCE No.

AN ORDINANCE AUTHORIZING THE LAND DISPOSITION AND DEVELOPMENT CONTRACT ("LDDC") TO BE ENTERED INTO WITH LUNA DEVELOPMENT SERVICES, LLC, ("LUNA") AND AUTHORIZING THE CONVEYANCE OF PARCELS OF REAL PROPERTY TO LUNA AS PROVIDED IN THE LDDC.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the LDDC between the City of Norfolk and Luna Development Services, LLC, is hereby authorized.

Section 2:- That the conveyance of parcels of real property by the City to Luna, as shown in Exhibit A hereto attached, is hereby approved.

Section 3:- That the City Manager is hereby authorized to negotiate and execute an agreement with Luna, substantially in the same form and terms as in the LDDC that is hereto attached as Exhibit B, satisfactory to the City Attorney and consistent with this ordinance.

Section 4:- That this ordinance shall be in effect from and after thirty days of its adoption.



## Exhibit A

### SUBDIVISION PLAN



**LAND DISPOSITION AND DEVELOPMENT CONTRACT**

**BETWEEN**

**THE CITY OF NORFOLK, VIRGINIA**

**AND**

**LUNA DEVELOPMENT SERVICES, LLC**

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## LAND DISPOSITION AND DEVELOPMENT CONTRACT

THIS LAND DISPOSITION AND DEVELOPMENT CONTRACT ("Contract", is made this \_\_\_ day of November, 2015 ("Effective Date"), between the **CITY OF NORFOLK, VIRGINIA** ("City"), a municipal corporation of the Commonwealth of Virginia, and **LUNA DEVELOPMENT SERVICES, LLC**, a Virginia limited liability company ("Developer"). The parties to this Agreement may be collectively referred to by the term "Parties" or individually "Party".

### RECITALS:

A. Under the leadership of the City Council of the City of Norfolk, the City has embarked on a plan to maintain, retain, improve and expand residential developments in the City, to provide catalysts for incremental business growth, which stabilize and enhance existing neighborhoods in the City.

B. The City desires to broaden and modernize the supply of available affordable residential units and to see constructed by private developers, a Project (defined below) of specific size, high quality design, and quality materials on the real property owned by the City, known as The Ballentine School ("School") and consisting of approximately 2.75 acres, as described in **Exhibit "A"** ("Property").

C. Negotiations by the Parties have produced this agreement for the Developer to arrange on the Property the construction, furnishing and equipping of up to 25 market rate apartments (each an "Apartment" and collectively the "Apartments") in the School building and 17 townhome units (each a "Townhome" and collectively the "Townhomes" and with the Apartments the "Residential Units") on the Property, with "Related Facilities". The Project (defined below) is described in detail in Developer's Proposal in response to City's



request for proposals number 3072, as amended, which is hereto incorporated by reference and attached as **Exhibit "B"** ("Developer's Proposal").

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE I** **DEFINITIONS OF TERMS**

When used in this Contract with an initial capital letter or letters, each of the following terms shall have the meaning given it below.

(a) "Affiliate" of Developer means any legal entity, which controls, is controlled by, or is under common control with the Developer.

(b) "Completed" or "Completion" means with respect to Phase I and Phase II (each defined below) the date when the construction of the Project is sufficiently completed ("Substantial Completion") so as to permit use of the buildings for the purposes for which intended and a certificate of occupancy has been issued for all the component uses, which date may precede the full completion of all punch-list items, landscaping and similar design and development functions.

(c) "Contract" means this Land Disposition and Development Contract between the City and the Developer.

(d) "Contractors" means the general contractors and subcontractors for construction of the Project.

(e) "Deposit" means the sum of \$10,000.00 to be paid by Developer to City at the time of execution of this Contract.



(f) "Development Timeline" means a timeline for development of the Project to be prepared by Developer and approved by City.

(g) "Financing Commitment" means a commitment or commitments reasonably satisfactory to the City, which has or have been accepted by Developer from one or more equity investors or institutional lenders who are approved by the City, to finance the construction of the Project. Such approval will not be unreasonably withheld. In order to constitute a Financing Commitment under this definition, a commitment must be duly authorized by the issuer, and must be in substantially the form and level of detail typically utilized by the prospective lender or investor in similar transactions, including requirements for closing and conditions thereof; and, in the case of loan commitments, setting forth the proposed principal amount, interest rate, amortization terms, collateral or guaranty requirements, maturity date, improvements to be constructed and the expiration date of the commitment.

(h) "Outside Closing Date" means the latest date on which Closing may occur, which is 210 days from the date this Contract is made for Phase I, and, for Phase II, the date five years from the date of issuance of a certificate of occupancy for Phase I.

(i) "Project" means the Residential Units and Related Facilities to be constructed by Developer on the Property. The Project will also include the completion of the Related Facilities by Developer, at Developer's cost. The Project will be constructed in two phases, herein referred to as "Phase I" and "Phase II" and each generally referred to as a "Phase" and collectively as the "Phases". Phase I shall consist of renovating, converting, furnishing and equipping the School building into up to 25 Apartments and the Related Facilities (defined below). Phase II shall consist of constructing 17 Townhomes on the two parcels shown as "Phase II" and highlighted in yellow on **Exhibit "C"** attached hereto (the "Townhome Parcels"). Phase II may not be

commenced until construction is allowed under laws and regulations applicable to redevelopment of historically designated sites.

(j) "Related Facilities" means the relocation of the two existing basketball courts and related equipment on adjacent land owned by the City and the construction of a pathway around the BMP, as shown in **Exhibit "D"**.

(k) "Unavoidable Delay" means a delay due to causes beyond a Party's control, including but not restricted to strikes, lockouts, actions of labor unions, riots, injunction, explosions affecting the Project, acts of God or of the public enemy, acts of government, insurrection, mob violence, terrorism (foreign or domestic), civil commotion, sabotage, malicious mischief, vandalism, inability (notwithstanding good faith and diligent efforts) to procure, or general shortage of labor, equipment, facilities, materials, or supplies in the open market, failures of transportation, fires, other casualties, disputes with insurers, failure of insurers to pay an insured claim, epidemics, quarantine restrictions, freight embargoes, severe weather which physically damages the Project or otherwise impairs Developer's ability to proceed with construction of the Project, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals, or delays of contractors due to such causes, unexpected soil or below ground conditions that impairs construction of the Project, or any other cause or contingency similarly beyond the control of the Parties or the Developer's contractors.

## **ARTICLE II AGREEMENT TO CONVEY AND DEVELOP PROPERTY**

Section 2.1. Conveyance of Property "As Is", Development, Design and Construction of Project.

For each Phase of the Project, City will convey the parcel or parcels of Property to Developer by special warranty deed ("Deed") which title shall be good and marketable and free

of any liens, encumbrances, or other title defects which would prohibit or impair the use of the Property for the purposes contemplated by this Contract or which City has declined to cure. The City shall also grant to the Developer such easements ("Easements") on the adjacent property owned by the City, as are reasonably necessary for each Phase to provide ingress and egress to the Property as shown on **Exhibit "C"**. The City shall have reasonable time to cure any title defects which are not acceptable to Developer and/or its lender. The City, however, shall have the option of declining to cure any defect and if the City does decline to cure any defect, or does not cure any defect that it has agreed to cure, the Developer shall have the right to terminate this Contract and to receive the return of the Deposit as its exclusive remedy for termination of the Contract and any related claim. Developer will accept from City the deed for the Property, subject to the terms and conditions hereinafter set forth.

Except as expressly set forth in this Contract, Developer is accepting the use and conveyance of the Property "as is." Developer shall have through the Review Period (defined below) to exercise its rights under Section 4.1. In the event Developer determines the Property is unsuitable for constructing the Project, its sole remedy shall be return of its Deposit and termination of the Contract. Each Party shall be responsible for its costs of closing. Title to the Property will not be conveyed before the Developer closes on the financing for the acquisition of the Property and construction of the Project and the terms and the source of the financing is acceptable to the City. Developer shall be responsible for any demolition.

The City shall not be obligated to any extent under this Contract unless and until City Council has properly approved the Contract and the City Manager has executed.



Section 2.2. Restrictive Covenants.

The restrictive covenants contained in this Section 2.2 ("Restrictive Covenants") are intended and designed to operate as covenants binding upon Developer and its Affiliates, successors and assigns of this Contract, conditioned upon City's agreement to any assignment. The Restrictive Covenants are intended for the benefit of the Property provided that only the City and any successor or assignee of the City that is a local governmental agency and the United States with respect to Subsection 2.2(d), shall have the right, power and authority to enforce the Restrictive Covenants; and provided, further that the City shall have the right, power and authority (without the necessity of obtaining the consent of Developer to waive compliance by Developer with any of the Restrictive Covenants whenever it makes a determination, in its reasonable discretion, that such non-compliance or default does not materially interfere with the objectives of the City with regard to development). In addition to, but not in lieu of any other right or remedy for breach of any one or more of the Restrictive Covenants, the City shall be entitled to seek injunctive relief, without necessarily showing monetary or special damages and without posting bond or security for a bond for the award of a permanent injunction. The violation of any of the Restrictive Covenants and the exercise of any right or remedy for breach of any of such covenants shall not destroy, impair or otherwise affect the lien of any recorded instrument given by Developer to secure repayment of a loan or loans made for the purpose of providing funds for improving the Property. The Parties recognize that the development and operation of the Property in a manner, which is in the best interest of both Parties, may from time to time require the confirmation, clarification, amplification or elaboration of the Restrictive Covenants in order to deal adequately with circumstances, which may not now be foreseen or anticipated by the Parties. The Parties, therefore, reserve unto themselves the right to enter into



such interpretive, implementing, amendatory or confirmatory agreements from time to time as they may deem necessary or desirable for any such purpose without obtaining the consent or approval of any person not a party to this Contract, except as may be expressly otherwise provided in this Contract.

The City has determined, in the exercise of its legislatively delegated discretion, that in order to carry out the objective of maintaining, retaining, improving and expanding existing development, and to set a prevailing high standard in aesthetics, public policy is best served by the imposition of conditions and restrictions upon the improvement, use, and maintenance of land which is intended for development or redevelopment by private enterprise. To that end, it is hereby specified that as part of the consideration for this transaction, the use of the Property to be conveyed is expressly subject to the following covenants, restrictions, limitations and conditions, which are to be imposed as covenants running with and binding upon the aforesaid Property and Project:

(a) The Property and Project shall not be used for industrial purposes, with the exception of parking, but shall initially and for at least a period of forty (40) years be used for residential purposes.

(b) There shall not be effected or executed any agreement, lease, covenant, conveyance or other instrument whereby the sale, lease or occupancy of the Property or Project is restricted upon the basis of race, creed, color, religion, sex, national origin, disability or familial status.

(c) Developer will comply with all state and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, creed, color, religion,

sex, national origin, disability or familial status in the leasing or occupancy of the Property, or any improvements thereon including Project.

(d) Developer agrees on its behalf, its successors and assigns, not to discriminate upon the basis of race, creed, color, religion, sex, national origin, disability or familial status in the sale, lease, rental, use or occupancy of the Property or any improvements thereon including Project. This covenant being given for the benefit of the public, the United States is expressly recognized as a beneficiary thereof and is entitled to enforce it for its own benefit or that of the public.

(e) Coal shall not be used for heating or developing fuel or for any other operation on the Property.

(f) Any land area within the Property not occupied by structures, hard surfacing or vehicular driveways, shall be kept planted with grass, trees and plants or shrubbery and maintained in a healthy condition and neat appearance. Upon default in such planting or in its maintenance, by Developer, its successors and assigns, after receiving in writing a notice to cure within ten (10) days of date of notice, agree that the necessary planting and work may be done by the City at the expense of Developer, its successors and assigns, from time to time and in keeping with this covenant.

(g) Developer agrees, on its behalf, its successors and assigns, that the Property and the Project will be maintained in a sound condition and neat appearance. Necessary repairs, maintenance and upkeep will be performed so as to preserve the attractive appearance, the physical integrity and the sanitary and safe condition of the buildings. Upon default in such repairs, maintenance or upkeep, the necessary repairs, maintenance and upkeep may be done by

the City at the expense of Developer, its successors and assigns, from time to time and in keeping with this covenant.

(h) All exterior walls shall be constructed of permanent materials impervious to deterioration in appearance, such as stone, exposed aggregates, brick, block, pre-cast panels, glass, EFIS (exterior finishing insulation systems), or hardiplank siding. All roof structures and appurtenances in excess of six (6) inches in diameter and twelve (12) inches in height shall be shielded or screened from observation from the same elevation. Such shielding or screening shall be with materials compatible and in harmony with the roof and/or side walls.

(i) Any service area, facility or equipment located on that side of the Project site which is adjacent to a public right-of-way is to be enclosed.

(j) No landscaping, improvements or structures, whether temporary or permanent in nature, shall be constructed, commenced or erected on the Property unless and until the plans, working drawings, specifications and materials therefor have been approved in writing by the City.

(k) Gas, electric and other utility services shall be underground to the Project from the main distribution. No utility line or connection to any utility line at or above ground level shall be permitted.

(l) The covenants under Subsections (a), (e), (f), (g), (h), (i), (j) and (k) shall expire forty (40) years after the date of the deed conveying the Property.

It is intended and agreed hereby that the Restrictive Covenants under Section 2.2 shall be covenants running with the land and that they shall in any event, and without regard to technical classification or designation, legal or otherwise be binding upon the City and Developer respectively as the case may be.



Section 2.3. Title Insurance.

Within sixty (60) days but in no event later than one hundred eighty (180) days after the date of this Contract, Developer at its expense shall obtain a commitment for title insurance for the Phase I parcel. Developer will obtain a commitment for title insurance for the Phase II parcels prior to the Closing Date for that Phase.

Section 2.4. Design of Project.

In accordance with Section 2.7 below, the design of the Project has to be approved by the City. The Project will consist of the buildings, facilities and elements described in Developer's Proposal.

For each Phase of the Project, Developer shall submit the preliminary plans to the City prior to the date when design is approximately 10% complete and again when the design is 90% complete and when the design is 100% complete. Developer may not proceed with construction of any phase of the Project until all plans for that phase are approved in writing by City and in order to enforce this Section 2.4, the City shall be entitled to seek injunctive relief without necessarily showing monetary or special damages and without posting bond or security for a bond for the award of a permanent injunction. The City's review will include that the design at the 90% and 100% stages is in substantial conformance with the previous plans provided and as modified. Notwithstanding the foregoing, Developer shall have the right to make changes in the design and construction to the extent required to meet applicable codes, rules, regulations, statutes and ordinances. Developer must also obtain all other approvals required by the Norfolk City Code and other applicable laws and regulations.



Section 2.5. Relocation and Construction of Utilities.

Developer shall be responsible for the relocation of any utilities which is necessitated by the construction of the Project on the Property and for bringing and connecting utilities to the Project, and all costs thereof shall be paid and borne by Developer. In addition, Developer shall cause all electric, telephone and other utility lines for the Project to be placed underground within public rights of way or utility easements located within the Property lines.

Section 2.6. City's Review Procedures.

For each phase of the Project, City shall review the design submissions within twenty (20) days of its receipt of the same, and shall give notice to Developer within such twenty (20) day period of its determination that either (a) the same are approved as complete in accordance with the terms of the Developer's Proposal as supplemented by this Contract, (b) that such submissions are incomplete or otherwise fail to comply with the terms of the Developer's Proposal as supplemented by this Contract, or (c) that such submissions must be modified. If the City determines that the Project design documents submitted to it hereunder are incomplete or otherwise fail to comply with the Developer's Proposal as supplemented by this Contract or must be modified in accordance herewith, it shall disapprove them or request such modification and shall, in its notice thereof to Developer, set forth with specificity the reasons for the failure to comply and/or the nature of the modification being requested. After correcting and/or modifying and completing the Project design documents in accordance herewith, Developer shall resubmit the Project design documents to the City within thirty (30) days after such notification from the City. The City shall, within twenty (20) days of the receipt of such revised Project design documents, give notice to Developer whether it approves or disapproves or requires further modification of the Project design documents and if it disapproves or requests

further modifications, it shall set forth the specific reasons for such disapproval or requested modifications in its notice thereof to Developer. Each further revision and resubmission of any of the Project design documents by Developer, and each further review and notice of approval or disapproval or request for modification of any of the Project design documents by the City shall be done or made pursuant to the procedures hereinabove set forth. The City shall make good faith efforts to meet the timelines for review provided for in this Section.

Section 2.7. Modifications of Design by Developer.

If Developer wishes to make modifications to the design of the Project, it shall submit such proposed modifications to the City in accordance with its requirements for review and approval. Any such submission shall clearly identify all changes, omissions and additions as compared to the previously approved Project design documents. If the City determines, in its reasonable judgment, that the proposed modifications are acceptable, the City shall so notify Developer, the Project design shall be deemed to incorporate the modifications that have been approved by the City and Developer shall perform its obligations under this Contract in accordance with the Project design as modified. If the City determines, in its reasonable judgment, that the proposed modifications are not acceptable, the City shall so notify Developer, specifying in reasonable detail which changes, omissions and additions are not acceptable and its reasons therefor, and Developer shall either (a) withdraw the proposed modifications, in which case, construction of the Project shall proceed on the basis of the Project design previously approved by the City, or (b) revise the proposed modifications in response to the City's objections, and resubmit such modifications to the City for review and approval within thirty (30) days after such notification from the City.



Section 2.8. Construction Schedule.

The Parties desire that each Phase of the Project and Related Facilities be Substantially Completed on or before the date falling twenty (20) months after Closing for that Phase; therefore, Developer shall commence construction on or before ninety (90) days following Closing, and thereafter prosecute the construction thereof on such schedule as is reasonably required to achieve this desired Date of Substantial Completion. Developer shall commence and diligently prosecute all investigations, studies, applications, architectural and engineering work, negotiation, letting and execution, as the case may be, of construction, demolition, and utility relocations or abandonment, contracts or commitments, necessary or appropriate for the commencement of construction. A construction schedule for each Phase of the Project will be furnished to the City prior to completion of design.

Section 2.9. Budget and Financing Commitment.

Prior to Closing for each phase of the Project, Developer shall produce a Development Budget and other evidence, in form and substance satisfactory to the City, of the Developer's financial ability to design, construct and equip the pertinent Phase of the Project and after the completion of Phase I, to maintain, operate and lease the Apartments in the Project, which evidence shall include Developer's Financing Commitment. City shall approve the Financing Commitment before Closing. Developer shall have secured the funds necessary to satisfy its obligations under this Contract by no later than the day before Closing. Failure to secure a Financing Commitment satisfactory to the City will permit the City to terminate this Contract. Developer's sole remedy for Phase I shall be the return of the Deposit.

Section 2.10. Failure to Obtain Financing or to Meet Construction Schedule.

In the event that Developer (i) fails to obtain the financing or funds in accordance

with Section 2.9, (ii) or fails to commence construction each Phase of the Project by the date ninety (90) days after the Closing (unless extended by the City) for that Phase, or (iii) abandons the Project for more than 90 days, the City shall be entitled, but not obligated, to terminate this Contract upon thirty (30) days' written notice to Developer, and upon the conclusion of such thirty (30) day period without a cure by Developer, this Contract shall terminate except for the City's remedies as outlined below.

In the event that this Contract is terminated as provided in the immediately preceding paragraph, City shall have the right but not the obligation to re-enter and take title to those portions of the Property which are not yet Substantially Complete, in which event Developer shall execute a deed re-conveying such portions of the Property as well as all improvements thereon to the City, subject to all recorded liens, and subject to all prior rights of Developer's lenders to assume responsibility for completing the Project (or the component thereof being financed by such lender) or otherwise cure the default. In the event that the City has the right to terminate this Contract as provided in this Section 2.10, but does not exercise its right to terminate and a portion of the Project is Substantially Completed on a date more than twenty-four (24) months after Closing, then in such event, Developer shall pay liquidated damages for such delay for each day between the date twenty (20) months after Closing, and the date the pertinent Phase of the Project is Substantially Completed. The amount of liquidated damages for such delay per day shall be the difference between real estate taxes that would be payable if the Project had been Substantially Completed on the date twenty (20) months after Closing and the actual real estate taxes that are assessed for the days between the date twenty (20) months after Closing and the date Phase I of the Project is Substantially Completed. Developer agrees that this provision is a valid and enforceable liquidated damages provision and



the City's Real Estate Assessor's assessment of the amount owed shall be accepted by Developer as the proper amount.

Section 2.11. Rezoning and Subdivision.

Promptly after the adoption of the ordinance authorizing this Agreement ("Council Approval"), the City shall apply for the rezoning of the Property to a zoning classification that permits the use of the Property as contemplated in the Project. Developer shall assist the City staff during the application and hearing process.

Promptly after Council Approval, the Developer, at its own cost and expense, shall proceed to prepare and have approved the subdivision of the Property in accordance with the general subdivision plan attached as **Exhibit "C"** attached hereto (the "Subdivision Plat"). The Subdivision Plat shall be recorded prior to submission of the deed for Phase I for recording.

Section 2.12. Risk of Loss and Insurance.

After each Closing, the Developer shall bear the risk of loss on the parcel(s) of the Property that is (are) conveyed to developer and all improvements thereto including the Project. In the event the Project is partially or fully damaged or destroyed prior to Completion and occupancy, Developer shall, subject to Unavoidable Delay, rebuild the Project at its cost, including the costs of design, construction and equipping same. Failure to commence reconstruction within a reasonable time, subject to Unavoidable Delay, or failure to complete reconstruction within a reasonable time after having received insurance proceeds, shall entitle City to have the Property reconveyed to City at no cost to City, but subject to all recorded liens, and subject to all prior rights of Developer's lenders to assume responsibility for completing the Project or otherwise cure the default.

Beginning on the Date of each Closing and until Substantial Completion of each Phase of the Project, Developer shall, at its sole expense and cost, keep the parcel(s) of the Property conveyed to Developer and all of the improvements, of the Project owned by Developer and located on the Property, insured, on forms and in companies acceptable to City, for the benefit of Developer and Developer's construction lender(s), in an amount equal to not less than the full insurable value (a) against loss and damage by fire, and (b) against loss or damage from risks covered by standard form of endorsement for use in Norfolk, Virginia. In no event shall the coverage amount be less than the amount it would take to design, construct and equip such component of the Project in the event of partial or complete destruction. City shall be an additional insured on all policies of Developer until final certificates of occupancy are issued for the various components of the Project.

Prior to Closing, City shall bear the risk of loss of the Property and any existing improvements. Loss of all or part of improvements on the property prior to Closing in no way requires City to rebuild the existing improvements; such loss will permit the Developer to terminate this Contract. Developer's sole remedy shall be the return of the Deposit if such loss occurs prior to Closing on Phase I of the Project.

### **ARTICLE III**

#### **CLOSING AND PURCHASE PRICE**

##### **Section 3.1. Time and Place of Closing.**

The closings for Phase I and Phase II ("Closing") shall take place at the Office of the City Attorney, 900 City Hall, Norfolk, Virginia 23510, or at any other location in Norfolk or via escrow, as agreed to by the Parties, on a date which shall be the earlier of either a date

mutually satisfactory to Developer and the City, but in no event later than the Outside Closing Date for each Phase. The date on which Closing occurs is the "Closing Date".

Section 3.2. Consideration.

(a) In consideration for the City's conveyance of the Property to Developer, Developer shall pay to City Two Hundred seventy-Five Dollars (\$275,000.00) paid as follows,

- (i) \$92,000 ("Purchase Price of Phase I") shall be paid at Closing for Apartments parcel (Phase I); and
- (ii) \$183,000 ("Purchase Price of Phase II") shall be paid at Closing for Townhomes parcels (Phase II);

and Developer shall be obligated to design, construct, and equip the Project and the Related Facilities at Developer's sole expense pursuant to the terms of this Contract.

Section 3.3. Conditions of Developer's Obligation to Close.

For each Phase of the Project, the obligation of Developer to close hereunder is expressly conditioned upon the fulfillment by and as of the Closing Date for that Phase of each of the conditions listed below, provided, however, that Developer at its election, evidenced by notice delivered to the City prior to or at the Closing, may waive any or all of the following conditions:

(a) All representations, warranties, acknowledgments and covenants made by the City in this Contract shall be true and correct in all material respects and shall continue to be true and correct in all material respects at the date of Closing.

(b) No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent the use and development of the pertinent Phase of the



Project in accordance with this Contract, the zoning, or in accordance with any related agreements to which the City is a party, or to which Developer is a party.

(c) Developer is able to obtain a commitment for title insurance insuring fee simple title to the Property upon Closing with no exceptions unacceptable to the Developer.

(d) The City Council shall have adopted an ordinance rezoning the Property to a zoning classification that permits the use of the Property for the contemplated Project.

Section 3.4. Conditions of City's Obligation to Close.

For each Phase of the Project, the obligation of the City to close hereunder is expressly conditioned upon the fulfillment by and as of the Closing Date for that Phase of each of the conditions listed below, provided, however, that the City at its election, evidenced by notice delivered to Developer prior to or at the Closing, may waive any or all of the following conditions:

(a) All representations, warranties, acknowledgments and covenants made by Developer in this Contract shall be true and correct in all material respects, and shall continue to be true and correct in all material respects at the date of Closing.

(b) No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent the use and development of the Property in accordance with this Contract, the zoning, or in accordance with any related agreements to which the City or Developer is or are a party.



(c) Developer will submit to City in accordance with City's zoning regulations two copies each of (i) the plan of development for the Project and (ii) for Phase II only, the foundation permit;

(d) Developer shall have obtained a Financing Commitment in a form and on terms satisfactory to the City and shall have provided to the City appropriate evidence thereof;

(e) Developer delivering to the City a certificate from the Virginia Board of Contractors or other evidence satisfactory to the City that the General Contractors selected by Developer to construct the Project are registered contractors in good standing with the Virginia Board of Contractors;

(g) A performance and payment bond each in the amount of each general construction contract for the Project in a form and substance acceptable to the City;

(h) City shall have approved the proposed Development Budget as required in Section 2.9 and the Construction Schedule required in accordance with Section 2.8;

(f) City shall have approved the design development documents in accordance with Sections 2.4 and 2.7;

(g) City shall have received a copy of the executed construction contracts; and

(h) City shall have received proof satisfactory to the City of the insurance required in Section 2.11.

(i) The Subdivision Plat shall have received all necessary approvals for recording and be fully signed and in final form for recording.

Section 3.5. Failure to Satisfy Conditions.

In the event that any of the conditions of a Party's obligation to close hereunder as set forth in Section 3.3 or 3.4 hereof are unsatisfied for any reason, other than Unavoidable Delay, that Party shall be entitled but not obligated, upon notice delivered to the other Party to this Contract at or prior to the Closing Date, to receive one adjournment of thirty (30) days of the Closing to enable such other Party to satisfy or cause to be satisfied such conditions. If on the original or any adjourned Closing Date, any condition(s) of the obligation of a Party to close hereunder shall remain unsatisfied and has not been waived by such Party, then such Party shall have the right to terminate this Contract upon thirty (30) days' written notice to the other, and unless, during such thirty (30) days' written notice to the other, either (a) the Party entitled to terminate shall waive such condition(s) as provided above and agree to proceed to Closing hereunder, or (b) this Contract shall immediately terminate, and neither Party shall have any further rights hereunder or obligations to the other of any nature hereunder or by reason hereof, except that with respect to a failure to satisfy any condition of the Closing that results from a Party's default under this Contract, the provisions of this Contract pertaining to such default, and to the Parties' respective rights, remedies and obligations in connection with such default, shall be applicable in addition to, or (in the non-defaulting Party's discretion) as an alternative to, the non-defaulting Party's aforesaid right of termination.

Section 3.6. Deliveries at Closing by City.

(a) At the Closing for each Phase, City will execute and deliver to Developer the following:

- (1) A Deed (and any other required documents) conveying the pertinent parcel(s) Property and Easements to Developer by special warranty,

subject to the restrictive covenants described in Section 2.2, in form reasonably acceptable to the City and Developer;

(2) A certificate to the effect that the City is not a foreign entity subject to the withholding requirements of the Foreign Investment in Real Property Tax Act;

(3) A certified copy of the ordinance adopted by the City authorizing the conveyance of the Property to Developer pursuant to the terms of this Contract;

(4) A 1099 report form pursuant to Section 6045 of the Internal Revenue Code of 1986, as amended;

(5) Form R-5 if required by the Virginia Department of Taxation to evidence that City is a Virginia resident;

(6) Any other document or instrument required hereunder or reasonably requested by Developer or its title insurance company in order to consummate the transactions contemplated herein.

Section 3.7. Deliveries at the Closing by Developer.

At Closing for each Phase, Developer shall execute and/or deliver the following:

(a) Developer shall deliver to the City the Purchase Price for the pertinent Phase, less the Deposit for the Closing of Phase I, by cashier's check, wire transfer or certified funds.

(b) Developer shall deliver to the City evidence reasonably satisfactory to the City that Developer has been validly formed as a limited liability company and is qualified to do business in the Commonwealth of Virginia and City of Norfolk.



(c) Developer shall deliver to the City the written opinion of counsel of Developer, in form reasonably satisfactory to the City (assuming that all signatures are genuine, and further assuming that all documents presented to such counsel as copies conform with the originals), stating (1) that Developer is a limited liability company, duly formed and validly existing under the laws of the State of Virginia; (2) that Developer has the power to enter into the transactions contemplated by this Contract (including, without limitation, entry into this Contract); (3) that all actions by Developer required to be authorized in the transaction contemplated by this Contract have been duly authorized; (4) that this Contract and all documents required to effectuate the transactions contemplated hereby which are to be executed by Developer (including, without limitation, all agreements and instruments to be executed by Developer at the Closing) have been duly executed and delivered by Developer, and constitute binding obligations of Developer, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganizations, moratoriums or similar laws affecting the enforcement of creditors' rights generally and by legal and equitable limitation on the enforceability of specific remedies; and

(d) Any other document or instrument required hereunder or reasonably requested by the City in order to consummate the transactions contemplated herein, which document or instrument will be in form and substance reasonably acceptable to Developer, including but not limited to proof of insurance required by Section 2.12, which document or instrument will be in form and substance reasonably acceptable to City.

Section 3.8. Prorations.

Proratable items relating to the Property will be prorated as of the date of Closing.

Section 3.9. Closing Costs.

City is exempt from grantor's tax on the Deed. Developer will pay all other recording taxes and fees in connection with the recordation of the Deed, the cost of its title insurance commitment and policy, the cost of obtaining the survey and the Subdivision Plat, and all other costs incurred in connection with its due diligence investigations of the Property. Each Party will pay its respective attorney's fees.

**ARTICLE IV**  
**ADDITIONAL COVENANTS**

Section 4.1. Right of Entry and Review Period.

Before the Closing, Developer and its agents, representatives and contractors will have the right to enter the Property for the purpose of surveying the Property, conducting soil tests and engineering studies and performing such other examinations as Developer deems necessary to determine the suitability of the Property for its contemplated development. Within ten (10) days of the Effective Date, the City shall deliver to or make available to Developer all reports, surveys, plans, studies and other Property information in the possession or control of the City.

Developer shall have until 11:59 p.m. on the 180th day after the date of this Contract (hereinafter the "Review Period"), to terminate this Contract should the Developer determine, in its sole and absolute discretion, that the Property is not suitable in all respects for Developer's intended use of the Property, or if Developer is not satisfied, in its sole and absolute discretion, with the results of any tests, surveys, reports, title search or title commitment regarding the Property or Developer's intended use thereof, by giving written notice to City of the termination of this Agreement, whereupon the Deposit shall be returned to the Developer and thereafter neither party to this Agreement shall have any further rights against or obligations or

liabilities to any other party.

Developer will keep the Property free and clear of all mechanics' liens and will indemnify, defend and hold the City harmless from and against any and all claims, liens, liabilities, damages, losses and costs (including reasonable attorneys' fees) arising from the exercise by Developer of its right of entry under this Section. If the Closing does not occur, Developer will repair any damage to the Property caused by Developer's exercise of such right of entry.

Section 4.2. Signage. Following the full execution of this Contract, Developer or one or more Affiliates, and the lender(s) of the Project, may each erect a sign, subject to zoning and other regulations, describing, in the Developer's case, the components of the Project being developed, and in the case of each lender, advertising its role in funding such component of the Project.

Section 4.3. Condemnation.

If before the Closing all or any portion of the Property is taken under the power of eminent domain or is transferred in lieu of such taking, and such taking or transfer materially interferes with Developer's contemplated development of the Property, Developer may, at its option, (i) terminate this Contract by notice to the City within thirty (30) days after Developer is notified of such taking or transfer, in which case return of the Deposit shall be the sole and exclusive remedy or (ii) proceed to Closing, with a proportionate reduction in the purchase price.

Section 4.4 . Time is of the Essence.

Time is of the essence as to the performance of the terms and conditions of this Contract. To the extent any provisions of this Contract specifically state that time is of the essence, such



specific provisions are not intended to mean that time is not of the essence as to the remaining provisions of this Contract.

Section 4.5. Staging Area and Construction Operations.

The City will allow Developer and/or its contractor to use a portion of one of the Phase II parcels as a staging area. Developer shall see that any pile driving and similar construction methods are not started before 9:00 a.m. and cease by 6:00 p.m. on weekdays, and are not started before 10:00 a.m. and cease before 5:00 p.m. on weekends and holidays.

Section 4.6. Maintenance of Townhome Parcels.

As consideration for the phasing of the Project, the Developer shall keep the Townhome Parcels planted with grass, trees and plants or shrubbery and maintained in a healthy condition and neat appearance, after completion of Phase I.

**ARTICLE V  
TERM**

The term of this Contract shall commence upon the date first entered on this Contract, and shall end upon the earlier of (i) the Completion of the Project, except for any provisions hereof which expressly survive, or by their terms should reasonably survive, the Completion of the Project.

**ARTICLE VI  
PROGRESS REPORTS**

In addition to timely construction of the Project, Developer shall provide the City with written quarterly progress reports that reflect all work done and costs paid during the preceding quarter, in the format attached as **Exhibit "E"**.

## **ARTICLE VII CERTIFICATION OBLIGATION OF CITY**

Upon Final Completion of Phase I of the Project and the issuance of all certificates of occupancy, City will furnish Developer an appropriate instrument certifying that Developer has complied with the provisions hereof relating to the construction of the Project. If City shall refuse or fail to provide certification, the City shall, within ten (10) days after written request by Developer (which may do so on behalf of any of its Affiliates), provide Developer with a written statement indicating in adequate detail how Developer or an Affiliate has failed to Complete the construction of any component of the Project in conformity with this Contract, or is otherwise in default, and what measures or acts will be reasonably necessary in the opinion of City, for Developer or such Affiliate to take or perform in order to obtain certification.

## **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

### **Section 8.1     Default by Developer.**

The occurrence of any of the following shall be an event of default by Developer under this Contract:

- (a) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;
- (b) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;
- (c) The entering of an order for relief against Developer or the appointment of receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days;

(d) The failure of Developer to perform or to observe any covenant, obligation, condition or requirement of this Contract not specifically named as a default in this Section 8.1, and the continuation of such failure for thirty (30) days after written notice from City specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30) day period, the failure either (i) to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such effort to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30) day period, in no event to exceed ninety (90) days after the written notice of default.

Section 8.2. Remedies for Default by Developer.

Upon the occurrence and continuance of any event of default described in Section 8.1 or any other breach of this Contract by Developer, prior to Closing, the City may elect to terminate this Contract by giving written notice of such termination to Developer, and this Contract shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination) and the Deposit shall be returned to the Developer. In the event that termination under this Section 8.2 occurs after Closing, in addition to its other remedies, but subject to all rights of lenders to cure Events of Default, City may elect to re-enter and take back title to the, in which event Developer shall re-convey such title to the City, subject to valid recorded liens. In addition to the remedies of termination described above, a non-defaulting Party shall have available to it all other rights and remedies provided in this Contract or at law or in equity. Remedies under this Contract shall be cumulative and not restrictive of other remedies. The prevailing Party in any action or proceeding to enforce the terms of this Contract shall be entitled to recover from the unsuccessful Party all costs and expenses, including reasonable attorney's fees incurred therein.



## **ARTICLE IX ASSIGNMENT LIMITATIONS**

Except as otherwise specifically provided herein, Developer, individually or jointly, may not assign this Contract or any right, title or interest hereunder, to anyone or any entity without the City's written permission; provided, however, that Developer may assign portions of this Contract to its Affiliates to assume and perform the responsibilities of Developer, which assumption and performance may include the acquisition of fee simple ownership of portions of the Property, subject to City's rights and Developer's obligations under this contract, and the construction thereon of a component portion of the Project. In any such case, the Developer shall notify the City of the assignment promptly.

## **ARTICLE X MISCELLANEOUS**

### Section 10.1. Low and Moderate Income Job Opportunities.

Developer shall make every reasonable effort to include provisions in the construction contracts for the Project (i) requiring the general contractors of the Project to make a good faith effort to see that jobs at the Project are made available to low and moderate income persons; and (ii) prohibiting any contractor from discriminating on the basis of race, color, creed, national origin, age or sex. Developer will cooperate with the City in alerting the contractors to any training programs or other job opportunity sponsored by the City, and encourage participation in such programs.

### Section 10.2. City's Project Representative.

The City hereby appoints the City's Director of Development or his designate as its representative for the Project, who will be responsible for coordinating the City's approvals hereunder.

Section 10.3. No Broker.

Developer and City each represent and warrant that no broker to whom a commission, fee or other compensation is payable is or has been involved in or brought about the transactions contemplated by this Contract. Each of said Parties shall indemnify and hold the other harmless from any and all claims, obligations, liabilities, costs or expense (including reasonable attorneys' fees) incurred as a result of any claim for brokerage commissions, fees or other compensation by any person or entity who alleges having acted or dealt with the indemnifying Party in connection with the Project or the transactions contemplated by this Contract. The Parties' obligations under this Section shall survive the Closing and any termination of this Contract.

Section 10.4. Relationship of Parties.

This Contract is not to be construed to create a partnership or joint venture between the Parties.

Section 10.5. Negotiated Document.

The Parties acknowledge that the provisions and language of this Contract have been negotiated, and agree that no provision of this Contract shall be construed against any Party by reason of such Party having drafted such provision of this Contract.

Section 10.6. Governing Law.

This Contract shall be governed and construed by the laws of the Commonwealth of Virginia.

Section 10.7. Successors and Assigns.

The agreements, terms, covenants and conditions of this Contract shall be binding upon and inure to the benefit of the City, Developer, and except as otherwise provided in this Contract,

their respective successors and permitted assigns.

Section 10.8. Further Assurances.

Each Party hereto shall do all acts and things and make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Contract.

Section 10.9. No Amendment.

Neither this Contract nor any provisions hereof may be changed, modified, amended, supplemented, altered, waived, discharged or terminated except by an instrument in writing signed by both Parties and if required by any mortgage document, with the written consent of the applicable lender.

Section 10.10. Survival of Closing.

The provisions of this Contract shall survive the Closing.

Section 10.11. Effectiveness.

This Contract shall not be binding or effective until executed and delivered by the Parties hereto.

Section 10.12. Waiver.

The failure of any Party to insist upon strict performance of any of the terms or provisions of this Contract or to exercise any option, right or remedy contained in this Contract, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, of this Contract nor be deemed to have been made unless expressed in writing and signed by such Party.



Section 10.13. Exhibits.

Each Exhibit referred to in this Contract is incorporated by reference and attached to this Contract.

Section 10.14. Consent and Approvals.

(a) All consents and approvals which may be given under this Contract shall be in writing, as a condition of their effectiveness. The granting of any consent or approval by a Party to perform any act requiring consent or approval under the terms of this Contract or the failure on the part of a Party to object to any such action taken without the required consent or approval shall not be deemed a waiver by the Party whose consent was required or its right to require such consent or approval for any further similar act.

(b) If it is provided that a particular consent or approval is not to be unreasonably withheld, such consent or approval also shall not be unreasonably conditioned or delayed and any matter required to be done satisfactorily or to the satisfaction of a Party only be done reasonably satisfactorily or to the reasonable satisfaction of that Party.

Section 10.15. Interpretation.

For the purpose of construing this Contract, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation or partnership. Headings of articles and sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular articles or sections to which they refer.

Section 10.16. "Including".

In this Contract, whenever general words or terms are followed by the word "including" (or other forms of the word "include") and words of particular and specific meaning, the word "including without limitation," and the general words shall be construed in their widest extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

Section 10.17. Notices.

All notices or other communications required or desired to be given with respect to this Contract shall be in writing and shall be delivered by hand or by courier service, or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the Party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the Party intended to receive such notice or when such Party refuses to accept delivery of such notice. Upon a change of address by either Party, such Party shall give written notice of such change to the other Party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

To City:

Director  
Department of Development  
City of Norfolk, Virginia  
500 E Main St., Suite 1500  
Norfolk, VA 23510

with a copy to:

Bernard A. Pishko,  
City Attorney  
Office of the City Attorney  
900 City Hall  
810 Union Street  
Norfolk, VA 23510

To Developer:

Michael E. Glenn, Manager  
Luna Development Services, LLC  
2601 Granby Street  
Norfolk, Virginia 23510

with a copy to:

LeClairRyan, A Professional Corporation  
999 Waterside Drive, Suite 2100  
Norfolk, VA 23510  
Attn: Ray King and Jean D. Mumm

Section 10.18 Compliance with Federal Immigration Law.

At all times during which any term of this Contract is in effect, Developer and its affiliates do not and shall not knowingly employ any unauthorized alien. For purposes of this section, an “unauthorized alien” shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

Section 10.19. Entire Agreement.

This Contract constitutes the entire agreement between the Parties with respect to the Project and supersedes all prior understandings and writings, and this Contract may be amended or modified only by a writing signed by City and Developer.



Section 10.20. Counterparts.

This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

Section 10.21. Recordation.

This Contract may be recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia.

*[SIGNATURES ON THE FOLLOWING PAGES]*

WITNESS the following signatures:

**CITY OF NORFOLK**

\_\_\_\_\_  
Marcus D. Jones, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk                      Date

COMMONWEALTH OF VIRGINIA;  
CITY OF NORFOLK, to-wit:

I, \_\_\_\_\_, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, do hereby certify Marcus D. Jones, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing contract dated \_\_\_\_\_, 20 , have acknowledged the same before me in my City and State aforesaid.

Given under my hand this \_\_ day of \_\_\_\_\_, 20 .

\_\_\_\_\_  
Notary Public  
Registration No. \_\_\_\_\_

**LUNA DEVELOPMENT SERVICES, LLC**

\_\_\_\_\_  
Michael E. Glenn, Manager

COMMONWEALTH OF VIRGINIA;  
CITY OF NORFOLK, to-wit:

Sworn to and subscribed before me, a Notary Public in and for the City and Commonwealth aforesaid, by Michael E. Glenn, Manager of Luna Development Services, LLC, this \_\_\_\_\_ day of \_\_\_\_\_, 20 . He is personally known to me or has provided \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Registration No. \_\_\_\_\_

My commission expires: \_\_\_\_\_

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Director of Development

APPROVED AS TO FORM  
AND CORRECTNESS:

\_\_\_\_\_  
Deputy City Attorney



## **EXHIBIT A**

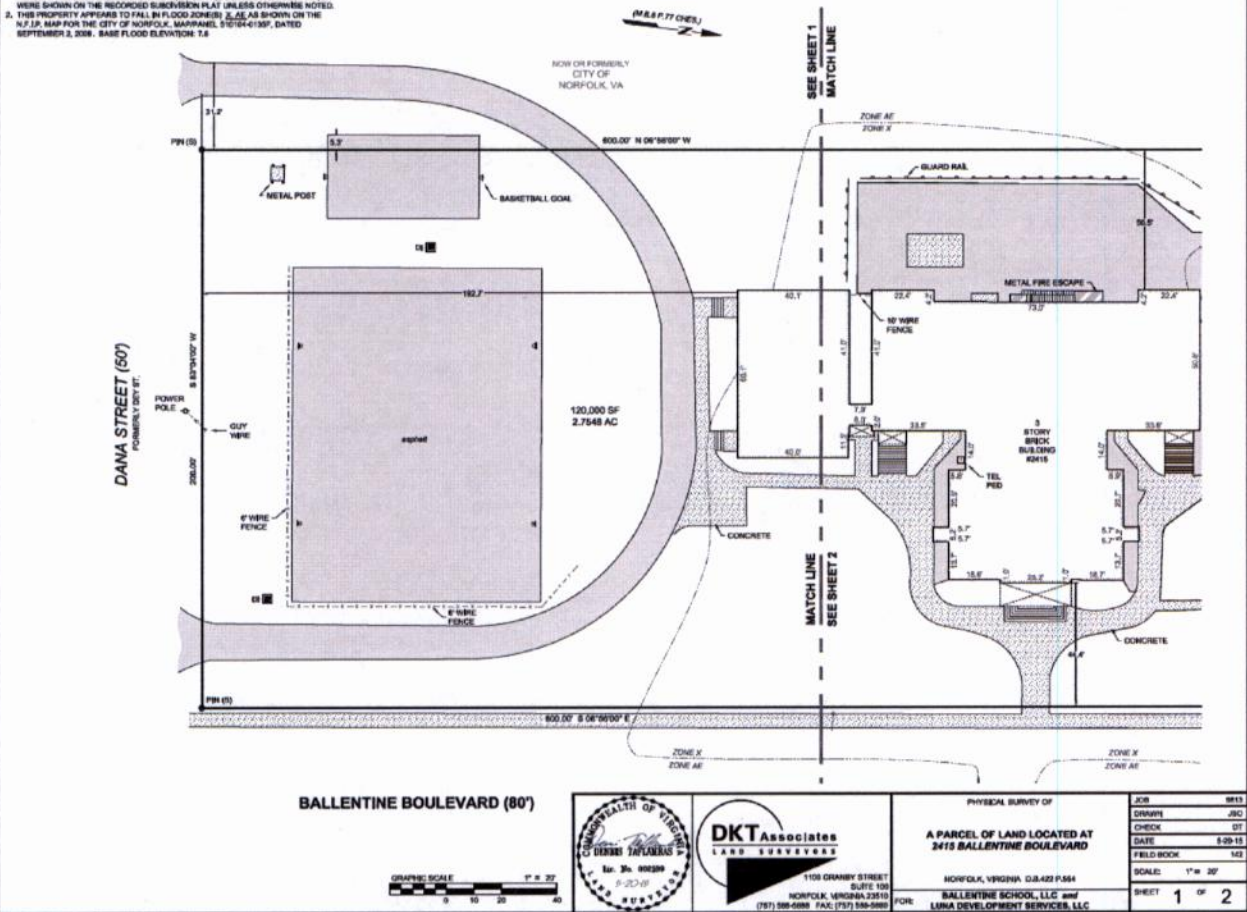
### **LEGAL DESCRIPTION OF THE PROPERTY**

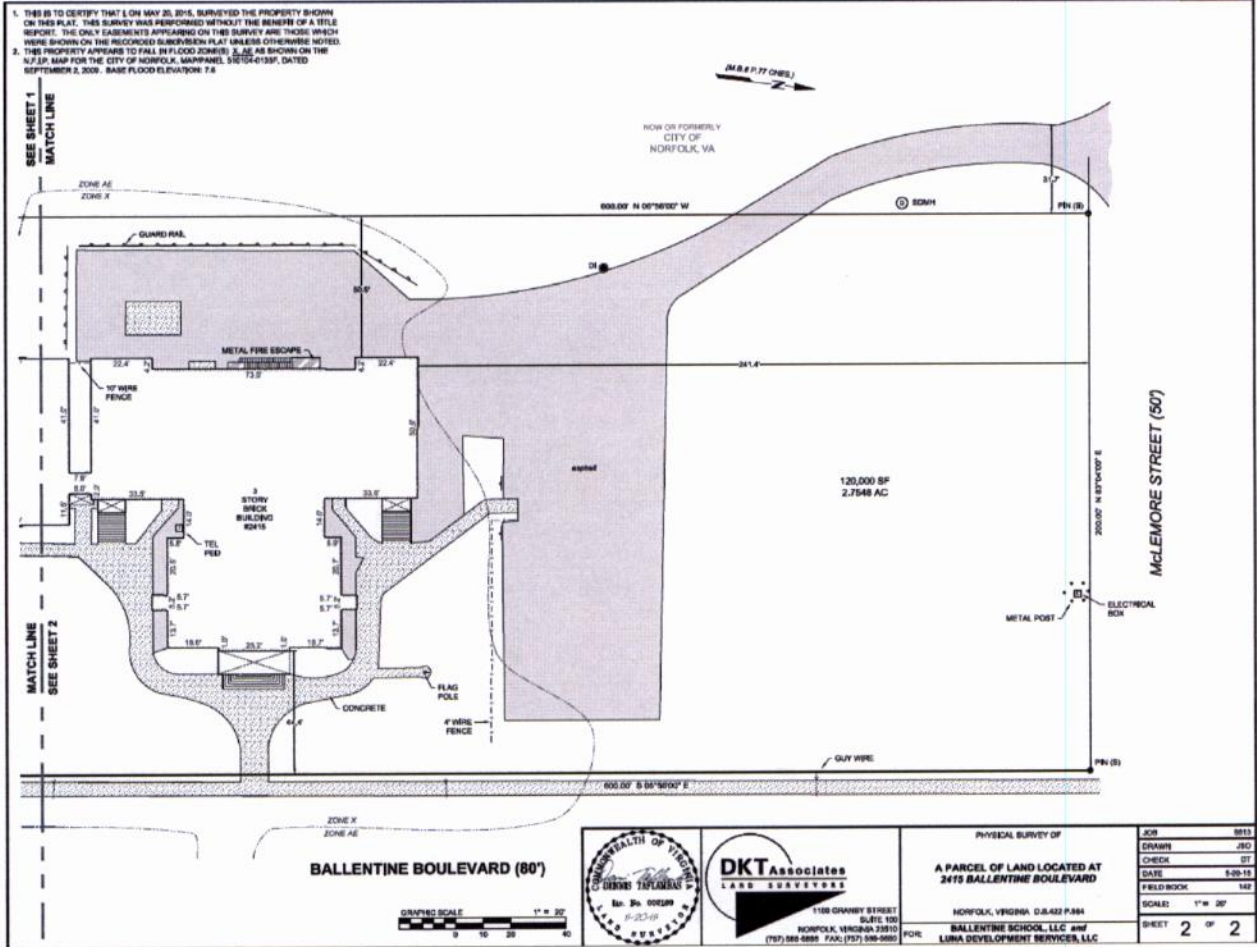
BEGINNING at the southwestern intersection of McLemore Street and Ballentine Boulevard, thence southwardly along the western edge of Ballentine Boulevard six hundred (600) feet to the northern edge of Dey Street; then westwardly along the said northern edge of Dey Street two hundred (200) feet; thence northwardly and parallel with Ballentine Boulevard six hundred (600) feet to the southern edge of McLemore Street; thence eastwardly along said southern edge of McLemore Street two hundred (200) feet to the point of beginning.

Such property containing approximately 2.7548 acres, and shown on the Survey prepared by DKT Associates, Land Surveyors, dated May 20, 2015 and attached hereto.

1. THIS IS TO CERTIFY THAT I ON MAY 20, 2015, SURVEYED THE PROPERTY SHOWN ON THIS PLAT. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT. THE ONLY EASEMENTS OF RECORD ON THIS SURVEY ARE THOSE WHICH WERE SHOWN ON THE RECORDED SUBDIVISION PLAT UNLESS OTHERWISE NOTED.

2. THIS PROPERTY APPEARS TO FALL IN FLOOD ZONE(B) X, AS SHOWN ON THE N.F.I.P. MAP FOR THE CITY OF NORFOLK, MAPNAME 51014-0135F, DATED SEPTEMBER 2, 2008, BASE FLOOD ELEVATION: 7.6







**EXHIBIT B**  
**DEVELOPER'S PROPOSAL**

[See Attached]

## **Ballentine School Proposed Redevelopment Plan**

a) Introduction - Luna understands the City's desire to aid in the revival of the Ballentine and Coleman Place neighborhoods where the Ballentine School is located and has served since 1915. The Luna Development Team proposes to maintain and renovate the current 39,000 SF historic brick structure converting it to up to twenty-four market-rate one and two bedroom apartments. We further plan to develop the land directly adjacent to the school, along Ballentine, McLemore and Dana Streets, adding either seventeen townhomes or ten single family homes (the attached Development Plan shows townhomes but can be easily revised to single family homes). As a part of the infill development, Luna would seek to have the basketball courts relocated to property owned by City and directly adjacent to the school property (see attached Site Layout) while retaining the existing baseball field which is currently located on the same section of property of the proposed relocated basketball courts. We would also preserve the lake and the large green space or park on the back of the property which is a vitally important part of the community and will serve to retain the neighborhood "feel" as development occurs.

The timing of the residential development and construction is predicated on the issuance of historic tax credits for the school. If historic tax credits are utilized, historic regulations then prohibit development on those parcels until 3 years or 5 years after the school has been renovated, depending on the use of state tax credits, federal tax credits or both. Development of the residential component of the project should occur no earlier than 2019.

The building itself, although in fairly good condition due to age, has long exceeded its useful life and is now functional obsolete. The building is of brick veneer, wood framing and a slate roof; all of which will require a great deal of repairs. Due to its age, we submit there will be a significant amount of structural repairs required. Additionally, all of the systems (electrical, mechanical, plumbing) will have to be completely new. The building will have to be brought up to local and national codes and safety standards which means adding a sprinkler system, adding a elevator and changing ingress and egress points. Clearly these costs, maintaining and preserving the school and the limited redevelopment of the school due to its historic nature make the "current assessed value" meaningless to most.

One substantially important unknown is the extent of asbestos and lead paint in the building and cost associated of remediation.

All of this work must be performed under the historic guidelines set forth the Department of Historic Resources and The Park Service. If not for the availability of



historic tax credits, this project would not be financially feasible.

b) Luna's "best practice" approach would be to leave the adjacent lake and green space virtually undeveloped with the exception of relocating one small corner of the park area for relocation of the basketball courts (similar to the existing baseball field on the other corner of the park area). Dimensionally, this relocated basketball court will be identical to the existing layout. Luna will cover the cost of the relocation of the basketball courts.

c) Luna Development is a Class A general contractor with over \$10,000,000 in bonding and is well known as a real estate development firm. We are a minority-owned Norfolk based business concentrating its development and construction efforts in help to maintain historic properties which hopefully help revitalize Norfolk. Our offices are located in Park Place, in a landmark building we historically renovated, and we are committed to preserving the historic fabric of the City whenever possible. The principal has occupied a seat on the Historic Architecture Preservation Committee for the City of Norfolk since 2008 in order to help guide the City in preserving its historic structures. Additionally, Luna is in the process of creating a new historic district (at its own expense) which will encourage the renovation of up to 55 historic structures, like the Ballentine School, and allow owners of these buildings opportunities for redevelopment that were not financially feasible in the past. The City will also directly benefit from this historic district with increased real estate taxes, permit fees and other associated fees, improved properties and new business relocation.

A majority of our employees live or have lived in Norfolk. Our sub-contractor pool consists of strictly local businesses.

d) Timeline – **Please see attached.**

e) We feel our approach will best benefit the surrounding community by providing safe, decent and quality affordable housing to the current and future residents of Ballentine and Coleman Place. In building townhouses we can provide a more viable option of "home-ownership" to families that may not be able to afford a more expensive single family home. These townhouses would front the streets and we would provide alley ways behind the homes for vehicle parking; almost identical to what the City developed in Huntersville along Church Street and in the Broad Creek Development. By maintaining the existing building and converting it to apartments we preserve the history and integrity of the neighborhood (as we believe the residents would want) as it has existed while providing for the future as the community grows.

f) Graphic illustrations – site layout, front & side elevations will be unchanged with exception of repairs to window, masonry and roof, floor layout plans showing individual units and units square footages, overall site development plan which included new construction, parking, and landscaping and relocation of basketball court. The relocated basketball court will be identical in size and constructed in like materials (to be approved by the City)– **Please see attached conceptual layout.**



**Of Note:** The Ballentine School building, built in 1915, is of imposing Colonial Revival and is constructed of stretcher bond brick on a solid brick foundation. The main block of the school measures three bays in width and is capped by a hipped slate roof with overhanging eaves. Details include overhanging eaves, exposed rafters, a central projecting two-story portico with Tuscan brick piers and wood column supports, an inset entry with replacement metal doors, a dentiled wood cornice, a molded entablature, a raised basement, eight central interior brick chimneys, 9/9 and 12/12 wood windows, and a decorative concrete water table with soldier brick cap. Other details include a rowlock brick stringcourse at sill level, rowlock sills, decorative brick panels, and square concrete corner blocks. The main block features a large rear addition which forms the building's wings. The addition features similar detailing to the main block, with gables projecting to the rear elevation. A circa 1960 gymnasium was added to the south elevation, featuring a flat roof, masonry construction and 4/4 wood windows. The School is located in the Ballentine Historic District and is eligible for history Tax Credits.

g) The direct and indirect economic and social advantage to the City are as follows:

- Increased residency and increased revenue from taxes on the new properties. The Ballentine School is currently vacant and is a financial and safety liability for the City. Our proposed development will put the property back on the tax rolls and along with the newly proposed redevelopment, will provide the City with much needed additional revenue.

h) We feel our proposal would provide the best benefit to the city as it is a mix of the old and the new. Norfolk is a city rich in history that is moving into the future. All of our old buildings have character and show that they can stand the test of time. We would love to preserve that history by re-purposing the building and surrounding it with new buildings that complement the existing.

i) Our office is based in Norfolk. We have a vested interest in moving the City of Norfolk into the future. As Norfolk grows so will our business.

## DEVELOPMENT PLAN



## SITE LAYOUT





## **Ballentine School Renovation Timeline**

<b>Item</b>	<b>Date</b>
Sale of Property (within 6 months per LDDC)	04/01/2016
Re-zoning of Property by City	04/01/2016
Construction Plans Completed	04/01/2016
Financing & Historical Tax Credit Process	04/01/2016
Permits	06/01/2016
Begin Site Work (create playground)	06/01/2016
Begin Renovation of School Building	06/01/2016
Substantial Complete	03/01/2017
Begin New Construction of Townhouses	03/01/2022
Substantial Completion of Townhouses	03/01/2023



EXHIBIT C  
SUBDIVISION PLAN



**EXHIBIT D**

**RELATED FACILITIES**



EXHIBIT E

FORM FOR PROGRESS REPORT

**QUARTERLY PROGRESS REPORT**  
**LUNA DEVELOPMENT SERVICES, LLC**  
***The Ballentine School***

Quarterly Report Number \_\_\_\_

Date of report \_\_\_\_/\_\_\_\_/\_\_\_\_

Prepared by \_\_\_\_\_

Checked by \_\_\_\_\_

Approved by \_\_\_\_\_

Luna Development Services, LLC  
2601 Granby Street  
Norfolk, VA 23517

All work done in preceding quarter:

All costs paid during preceding quarter:

Milestones achieved in preceding quarter: